D.B. CIVIL SPECIAL APPEAL (W) NO. 349/2005
(State of Rajasthan & Ors. Vs. Jagdish Chandra)

DATE OF ORDER : 09.11.2006

HON'BLE MR. JUSTICE N.N.MATHUR
HON'BLE MR. JUSTICE MANAK MOHTA

Mr. JPS Choudhary, Additional Government Advocate.
Mr. P.R.Mehta, for the respondent.

This Special Appeal is directed against the order dated 25.05.2005 passed by the learned Single Judge, allowing the writ petition.

The controversy involved in the instant case is as to whether the merit list could be changed on the basis of subsequent Circular. The learned Single Judge relying on a decision of the Hon'ble Apex Court in P.Mahendran and Ors. Vs. State of Karnataka and Ors., reported in ((1990) 1 SCC 411) has held that when the selection process has commenced, subsequent amendment would not affect the process of selection which has already commenced. Learned counsel for the respondent has brought to our notice a decision of the Division Bench of this Court dated 09.09.2005 rendered in State of Rajasthan & Anr. Vs. Vinod Kumar (D.B.Civil Special Appeal (Writ) DR(J) No.991/2005), wherein, the same view has been taken following the decision of the Hon'ble Apex Court.

In the said case, reference has also been made to a subsequent judgment of the Hon'ble Apex Court in Gopal Krushna Rath Vs. M.A.A. Baid (dead) by LRs., reported in ((1999) 1 SCC 544).

The learned Additional Government Advocate has sought to distinguish the Division Bench judgment on the ground that the said Special Appeal was dismissed on the ground of barred by limitation. We are unable to agree with the submission of the learned Additional Government Advocate. As perusal of the order shows that this Court has examined the issue on merit as well. Thus, the controversy involved in the instant Special Appeal has been concluded by the Division Bench of this Court in the case of State of Raj. & Anr. Vs. Vinod Kumar (supra) based on two decisions of the Hon'ble Apex Court.

Thus, no interference is warranted with the order of the learned Single Judge. Accordingly, the Special Appeal stands dismissed.

(MANAK MOHTA), J. **(N.N.MATHUR),J.**

ms rathore